

Marijuana Licensing Work Group Meeting #4

June 25, 2020

Attendance:

- Ashley Kilroy (co-chair), Denver Department of Excise and Licenses
- Molly Duplechian (co-chair), Denver Department of Excise and Licenses
- Councilmember Candi CdeBaca, Denver City Council
- Councilmember Kendra Black, Denver City Council
- Michelle Garcia, Denver Mayor's Office of Social Equity and Innovation
- Anshul Bagga, Denver City Attorney's Office
- Jason Moore, Denver City Attorney's Office
- Michel Holien, Denver Public Schools
- Sarah Woodson, The Color of Cannabis
- Shawn Coleman, 36 Solutions
- Truman Bradley, Marijuana Industry Group
- Sarah Belstock, Denver Public Health
- John Bailey, Black Cannabis Equity Initiative
- Jaqueline Flug, Drizly
- Clarissa Kriek, National Cannabis Industry Association
- Ryan Tatum, Cultivated Synergy
- Henny Lasley, Smart Colorado
- Dan Pabon, Schwazze
- Kenneth Allison, All About Hemp
- Ean Seeb, Governor's Office
- Jessica Scardina, Vicente Sederberg

Agenda:

1. Welcome and Introductions
2. MLWG Purpose and Ground Rules
3. MLWG Meeting Format
4. Continue Topic #3: Marijuana Equity Program
5. Next Steps

Meeting Notes:

Item	Discussion
Introduction and Marijuana Equity Program Comparison	<ul style="list-style-type: none">• Molly Duplechian opened the meeting with some housekeeping reminders and Michelle Garcia of the Denver Office of Social Equity and Innovation introduced the topic for discussion and provided a framework for the conversation. A member of the Department of Excise and Licenses presented research conducted on various cannabis equity programs in other jurisdictions throughout the country. Links to each of the programs are provided in the presentation.

	<ul style="list-style-type: none"> • A member requested the link to the presentation be included in the Microsoft Teams Live group chat so the public could access it. • A member asked whether state or city agencies have determined whether their programs are successful. The member also asked what challenges have persisted. A representative for the Department of Excise and Licenses said that partners in other jurisdictions have shared their challenges, successes, and advice with the city, but that none are likely prepared to say that their program is an outright success yet. The representative for the Department said that beyond legal challenges, some jurisdictions have experienced challenges with implementation, communication, or local cooperation. • A member asked whether the Department researched social equity programs in other industries and suggested legal challenges would not be unique to cannabis. A representative for the Department said research on equity programs has guided the city attorneys. A representative for the City Attorney’s Office said equity programs are new to licensing processes. • A member said the Health Kids Colorado Survey data shows high rates of youth marijuana use in communities of color. The member said outlet density in some neighborhoods may contribute to this, and that the city and the industry should consider how to strike balance between creating an equity program and protecting impacted neighborhoods. The member expressed concern that the budget shortfall created by COVID-19 will impact youth marijuana use prevention programs. • A representative for the Department expressed a desire to better understand how that balance could be achieved and expressed that it was for this reason that there is a diversity of background and experience on the workgroup so that the City can receive input on how to achieve that balance.
<p>Should Denver adopt the same language for a “social equity licensee” from HB 20-1424?</p>	<ul style="list-style-type: none"> • One member asked why there is an income requirement in the state definition and expressed concern that it makes the definition too broad such that it would benefit people beyond those it was intended to benefit. The member advocated for using race as criteria and eliminating the income criteria. • Another member responded that the income criteria is designed to actually do the opposite and allow more people to apply for social equity licensee status. The member recommended against removing the income criteria from the city’s definition and said if it is removed, some black and brown people will not qualify as social equity applicants because they do not have cannabis arrests or convictions or did not live in impacted neighborhoods. The member said there could be tiers of criteria carved out in rulemaking. For example, the member said, if an individual qualifies under multiple criteria, the individual may be eligible for additional resources, such as priority application review. The member said adding race to the

criteria could result in legal challenges, which the member felt would halt licensing and end up harming social equity applicants rather than helping them.

- One member suggested using tax revenue from the marijuana industry to create a fund to help equity applicants obtain capital to start a cannabis business.
- One member said that the criteria should be explicit about race and ethnicity.
- One member said that the criteria in the bill are a baseline and cities may tailor them to their own communities. The member suggested that disparities in health outcomes for youth in some communities could be related to businesses in those communities. The member said if people can own businesses in their own communities, the economic benefit may help mitigate some of the health disparities. The member said that the license classes of hospitality and new retail stores in particular are community-facing, and suggested that helping equity applicants own those businesses would allow youth to see business owners who look like them in the community.
- Another member responded and said that minority business owners might not start businesses in their own communities because zoning regulations may not allow it. The member said that finding locations is difficult and people will start businesses wherever they can find viable locations.
- A member asked when state rulemaking will begin. A representative from the Governor's Office said that rulemaking on HB 20-1424 will begin this summer and will be completed in time for the effective date of the bill on January 1, 2021.
- One member said that Denver has the largest proportion of black people in the state, so the city's criteria should be more narrowly tailored than the state's criteria. The member said that the majority of poor people are white, so using income criteria could unintentionally benefit more white people than black people. The member proposed removing the household income criteria and explicitly including minority groups.
- One member said the city should not attempt to prevent white people from participating in the program and cautioned against minimizing the experiences of people who were harmed by the war on drugs. The member said the program's objective should be to allow all people harmed by the war on drugs to benefit from legalization.
- A member asked whether it benefits the city to align with the state's definition. Another member said that aligning with the state as much as possible promotes compliance and make it easier to understand regulations. A third member disagreed and said cities appreciate the flexibility to create their own guidelines and do what is best for their communities.

	<ul style="list-style-type: none"> • One member suggested that there are likely between three and ten potential equity applicants currently. The member said that the group should focus on what success looks like, how to get more equity businesses into the market, and how to do it as fast as possible. • One member asked how disproportionately impacted areas will be designated. Another member responded that in other states, disproportionately impacted areas are identified by neighborhoods with high rates of police enforcement, cannabis arrests, or drug use, or neighborhoods with higher rates of poverty or lower household incomes. The member said that disproportionately impacted areas for Colorado would be determined in the state’s rulemaking process. • One member suggested that because black and brown children are using marijuana at higher rates, social equity businesses in their communities should be held to a higher standard of corporate social responsibility. • One member suggested using tracts that have been historically redlined to identify disproportionately impacted areas.
<p>What tools, services, and benefits would be valuable to individuals who qualify for Denver’s cannabis social equity program?</p>	<ul style="list-style-type: none"> • A member who represents the National Cannabis Industry Association said NCIA has created a social equity scholarship program that includes complimentary annual membership for social equity applicants, a reduction in sponsorship prices, a mentorship program and complimentary tickets to NCIA’s B2B trade shows. The member said the program will help social equity applicants with networking, technical assistance, and professional development opportunities. • One member suggested the city look at what its core capabilities are, which would include prioritized license distribution and financial assistance. The member said that industry groups are better suited than the city to provide technical assistance. • One member said there should be a dedicated revenue stream to create a grant program for equity applicants, not just low-interest loans. The member also said that the city should license cannabis cooperatives to alleviate financial burdens. • One member expressed that access to capital must be the top priority for an equity program or the program will fail. • One member asked how the infrastructure for an equity program would be funded. The member suggested that the industry should provide assistance where the city’s budget may fall short. • One member said the industry will contribute when and how it can but noted that federal prohibition and Section 280E of the Internal Revenue Code make it very difficult for the industry to profit, as plant-touching businesses are taxed at a rate of over 70%. The

	<p>member noted that because of this, there will be a need for ongoing financial support for social equity business owners.</p> <ul style="list-style-type: none">• A member said tax revenue could be used for the fund, and again urged the industry to fund social equity efforts.• One member said that discussions about federal taxation should not be part of the equity conversation.• One member said that industry consolidation is happening as smaller companies lose market share due to IRS Code 280E. The member said the city and state lose more money in the couch cushions than industry could ever contribute.• Another member said it is less likely the city and state will be able to help because of the budget shortfall created by COVID-19.• One member asked, if ten people apply for a license, and six were social equity applicants, would all six social equity applicants get a license if they qualify? Another member explained that licensing ratios could be used; for example, for every license issued to a social equity applicant, a non-social equity applicant could apply. For example, the member said, if the ratio is 5:1, after the fifth equity license is approved, a new license is made available for a non-equity applicant. The member said that the theory is that equity licenses create non-equity licenses as they are approved. The member also advocated for hospitality being a preferred license for equity applicants.• One member said there should be no licenses available for non-equity applicants.• One member advocated for a more neutral policy. The member suggested that new retail and cultivation locations should be awarded to equity applicants only, new hospitality licenses and delivery permits should be issued on a 1-to-1 ratio, and the city should figure out how to make the accelerator program work. The member cautioned against policies that would harm current business owners because if current industry does not support the program, the program will face challenges. The member pointed to Los Angeles, where the member said equity applicants are caught in a war between the existing industry and the city because the industry is unhappy with how licenses were distributed.• One member said there should be no new licenses until equity licenses are available. The member also said that a culture shift is needed.• One member said it is important to create a culture that normalizes marijuana hospitality in order for hospitality to be a viable license type.
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	<ul style="list-style-type: none"> • One member said that police and criminal justice receive large budgets, and suggested reallocating funds from police to an equity program.
<p>Which cannabis licenses should be included in the Cannabis Social Equity Program?</p>	<ul style="list-style-type: none"> • One member asked whether new hospitality licenses would be double with the number of cannabis locations in the city. The member also expressed concern about how this would impact youth marijuana use, particularly in neighborhoods that are saturated with marijuana businesses. • One member said that outlet density impacts youth use rates, and suggested thinking about this when discussing caps and location requirements. • One member said the city must define what percentage of cannabis licenses would help achieve equity, and the goal of the program. • One member asked why the city would award any licenses to non-equity applicants, and suggested the that the proportion of licenses should reflect the proportion of black and brown people arrested, sentenced or convicted during the war on drugs. A second member asked how the license distribution could reflect such a proportion when only a few licenses will be made available under the cap. The first member responded that any new licenses should go to equity applicants until there is a balance among all licenses that reflects the proportion of people impacted by the war on drugs. The second member responded that such a proposal would never achieve balance in the industry and would come at the expense of equity applicants. • Another member disagreed with the proportions of licenses being related to the proportion of black and brown people impacted by the war on drugs. The member noted this proposal would have a negative impact on social equity applicants, particularly in regard to delivery licensing, because the state requires stores that work with delivery transporters to hold delivery permits, too. The member said the concept is noble but it will not work in practice. • A member suggested prohibiting the sale of licenses because white business owners are likely to sell to other white business owners without giving social equity applicants an opportunity to buy the license. The member said all new licenses should go to social equity applicants until there is a balance, and there should be no new licenses awarded that deepen the imbalance. • Another member reiterated the proposal to make new store and grow licenses available to social equity applicants only. However, the member noted that if delivery licenses are made available only to equity applicants, the program will fail and people will not have access to medicine.

	<ul style="list-style-type: none"> • One member asked who would make the decision about how licenses will be allocated. A representative for the Department responded that it would draft an ordinance based on the feedback gathered from this group and other stakeholders, then it may reconvene the work group for feedback on the draft ordinance. The Department said that the ordinance would then move through the normal City Council process with additional public feedback.
<p>How does the existing licensing framework affect implementation of a successful equity program?</p>	<ul style="list-style-type: none"> • One member said the Zoning code is discriminatory. • One member said he previously testified to City Council that the Zoning regulations and proximity restrictions were too restrictive. The member said that industry is unlikely to fight for new grow or retail licenses in Denver because it is too difficult to find a viable location. The member said the zoning restrictions are a clear barrier, and that the 1,000-foot setback for cultivations from residential zone districts and the 1,000-foot setback from store-to-store are too restrictive. • One member said that there should be no lottery for the remaining cultivation and retail licenses and said that the lottery requirements create a barrier to entry. • One member asked how applicants would qualify for the lottery, and asked if the lottery was only open to social equity applicants, would there be additional criteria, such as proof of financial capability, that would eliminate some applicants? • One member asked why the lottery was procedure was created, and said that the qualification requirement to show proof of financial capability is a barrier to entry. The Department said that the lottery was established by City Council in 2016 when the city was nearing the end of the phase when only existing medical licensees were allowed to add or convert to a retail license and retail licenses were about to be made available to the public. • A member asked who will decide on proposals and recommendations made by work group members. A representative for the Department said proposals and recommendations will inform an ordinance that will be sent to City Council. The member suggested City Council members begin preparing their colleagues for some of the proposals and recommendations made in the work group. • A City Council member asked if lottery requirements would need to be changed through an ordinance or could be amended through rule. A representative for the Department said that the lottery requirements are in the municipal code and would need to be changed through an ordinance. • One member asked how many licenses have been revoked in the past two years. The Department said that revoked and surrendered licenses are returned to the lottery pool to be redistributed when the lottery is reopened.

	<ul style="list-style-type: none"> • One member said that if the city removes proof of financial capability as a requirement for the lottery, then the city should coordinate with the state, as the Marijuana Enforcement Division requires certain financial information for new applicants. • The Department clarified that zoning requirements apply to all like uses, not just marijuana, and explained that marijuana stores are allowed in zone use districts that allow retail sales, and cultivations are allowed in zone use districts that allow plant husbandry. The representative asked what members would propose to expand or adjust zone use districts. • A City Council member asked why cultivations were relegated to industrial neighborhoods and not commercial areas, and asked if the Department would recommend to the Department of Community Planning and Development that cultivations be allowed in commercial zones. The Department said that City Council has more influence over Zoning than the Department does, but that the Department would be happy to engage Community Planning & Development and City Council in a conversation about zoning requirements for marijuana cultivations. • Several members said that odor from marijuana cultivations is a significant concern that contributes to zoning of marijuana cultivations. Another member responded that odor regulations are unenforceable.
<p>Given the current economic climate, what are possible ideas for funding a cannabis social equity program in Denver?</p>	<ul style="list-style-type: none"> • One member suggested that funding for an equity program should come from annual fees on current licensees so as not to have to propose a tax increase to the voters. The member also suggested adding a fee to the sale of a license. • A representative for the Department reminded members that licensing fees go into the general fund, and those funds are allocated through the budget process. The representative also said fiscal policy requires that licensing fees can only charge what is needed to recoup costs of managing a program. A member responded that the fee would be used to recoup costs of implementing a social equity program. • One member recommended creating a mechanism to hold the equity program accountable for results. • One member suggested creating a Cannabis Control Commission to do work related to social equity because more staff will be needed to manage the program. • One member said that the way the city spends money is a statement about how the city values black and brown people. The member also said that the cannabis industry pays some of the highest fees of any industry, and that while it is easy to talk about top line industry revenues, the bottom line is what matters. • One member suggested allowing businesses to renew their licenses every two years, which would reduce the amount the administrative

	<p>effort for the city and allow the city to collect fees upfront to fund an equity program.</p> <ul style="list-style-type: none">• One member recommended using funds from the law enforcement budget to create an equity program and begin to undo harm done by the war on drugs.
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